



NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-254 and 50-265; NRC-2023-0081]

Constellation Energy Generation, LLC; Quad Cities Nuclear Power Station, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an exemption in response to a January 27, 2023, request from Constellation Energy Generation, LLC (Constellation), regarding the submittal of a subsequent license renewal application for Quad Cities Nuclear Power Station, Units 1 and 2. Pursuant to this exemption, if the licensee submits a subsequent license renewal application at least 3 years prior to the expiration of the existing operating licenses, and if the NRC staff finds it acceptable for docketing, the existing operating licenses will be in timely renewal under NRC regulations until the NRC has made a final determination on whether to approve the subsequent license renewal application.

DATES: The exemption was issued on May 15, 2023.

ADDRESSES: Please refer to Docket ID **NRC-2023-0081** when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2023-0081**. Address questions about Docket IDs in Regulations.gov to Stacy Schumann; telephone: 301-415-0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the "For Further Information Contact" section of this document.

- **NRC's Agencywide Documents Access and Management System**

(ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the

search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to PDR.Resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **NRC's PDR:** You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to PDR.Resource@nrc.gov or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert Kuntz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-3733; email: Robert.Kuntz@nrc.gov.

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: May 16, 2023.

For the Nuclear Regulatory Commission.

Robert F. Kuntz,
*Senior Project Manager,
Plant Licensing Branch III,
Division of Operating Reactor Licensing,
Office of Nuclear Reactor Regulation.*

Attachment – Exemption

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50-254 and 50-265

Constellation Energy Generation, LLC

Quad Cities Nuclear Power Station, Units 1 and 2

Exemption

I. Background.

Constellation Energy Generation, LLC (Constellation, the licensee), is the holder of Renewed Facility Operating Licenses Nos. DPR-29 and DPR-30 which authorize operation of the Quad Cities Nuclear Power Station (Quad Cities), Units 1 and 2. These units are boiling-water reactors located in Rock Island County, Illinois. The operating licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, Commission) now or hereafter in effect. The current operating licenses for Quad Cities, Units 1 and 2, each expire on December 14, 2032.

II. Request/Action.

By letter dated January 27, 2023 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML23027A061), Constellation requested an exemption from 10 CFR 2.109(b), which provides that if a nuclear power plant licensee files a sufficient license renewal application “at least 5 years before the expiration of the existing license, the existing license will not be deemed to have expired until the application has been finally determined.” Specifically, Constellation requested timely renewal protection under 10 CFR 2.109(b) if it submits a subsequent license renewal application (SLRA) for Quad Cities, Units 1 and 2, at least 3 years prior to the expiration of the existing licenses.

In its January 27, 2023, letter, the licensee stated that three special circumstances apply to its exemption request. The three special circumstances that

Constellation included in its request are:

- 1) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule;
- 2) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated; and
- 3) There is present any other material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption.

III. Discussion.

Under 10 CFR 54.17(a), the NRC requires that the filing of an application for a renewed license be in accordance with, among other regulations, 10 CFR 2.109(b). As provided in 10 CFR 54.15, exemptions from the requirements of Part 54 may be granted by the Commission in accordance with 10 CFR 50.12. Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present, as defined in 10 CFR 50.12(a)(2).

A. The Exemption is Authorized by Law

This exemption would allow Constellation to receive timely renewal protection under 10 CFR 2.109(b) if it submits a sufficient SLRA for Quad Cities, Units 1 and 2, at least 3 years prior to the expiration of its existing licenses. This means that if the licensee submits an updated SLRA by December 14, 2029, and the staff finds it acceptable for docketing, the existing licenses for Quad Cities Units 1 and 2 will not be deemed to have expired until the NRC has made a final determination on whether to

approve the SLRA. The staff has determined that granting this exemption is authorized by law.

Section 103c. of the Atomic Energy Act of 1954, as amended, permits the Commission to issue operating licenses, including renewed licenses. Section 2.109 implements Section 9(b) of the Administrative Procedure Act (APA), 5 USC 558(c), which states:

When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

The 5-year time period specified in 10 CFR 2.109(b) is not required by the Atomic Energy Act of 1954, as amended, or the Administrative Procedure Act. It is the result of a discretionary agency rulemaking under Sections 161 and 181 of the Atomic Energy Act of 1954, as amended (56 FR 64943; December 13, 1991) that was designed to provide the NRC with a reasonable amount of time to review a license renewal application and decide whether to approve it. Prior to 1992, the rules provided that licensees would have received timely renewal protection when they submitted their license renewal applications 30 days before the expiration of the current license. (56 FR 64943; December 13, 1991). In 1990, the NRC proposed modifying 10 CFR 2.109 to provide that applications must be submitted 3 years before expiration of the current license to be afforded timely renewal protection. (55 FR 29043; July 17, 1990). There is nothing in the preamble supporting the proposed rule or final rule revising 10 CFR 2.109(b) that suggests that applying the timely renewal doctrine to license renewal applications submitted 30 days before the expiration of the license was not authorized by law. Instead, it appears the Commission proposed to revise 10 CFR 2.109(b) from 30 days to 3 years before the expiration of the license so that the final determination on a license renewal application would typically be made before the current operating license expired. In the proposed rule, the Commission explained that it did not believe 30 days would provide “a reasonable time to review an application for a renewed operating license” and estimated that the technical review of a license renewal application would

take approximately 2 years. (55 FR 29043; July 17, 1990). In the final rule, the Commission stated that the technical review of the application would take approximately 2 years due to the review of many complex technical issues and that “any necessary hearing could likely add an additional year or more” (56 FR 64943; December 13, 1991). Ultimately, the Commission concluded in the final rule that timely renewal protection would be provided for license renewal applications filed 5 years before the operating license expired to promote consistency with the requirement that licensees submit decommissioning plans and related financial assurance information on or about 5 years prior to the expiration of their current operating licenses. Thus, in promulgating 10 CFR 2.109(b), the Commission considered that the time period needed to reach a final determination may be less than 5 years in some cases, but the rule also provides timely renewal protection for timely-filed applications to account for situations where the resolution of complex technical issues may take more time.

The exemption constitutes a change to the schedule by which the licensee must submit its SLRA and is administrative in nature; it does not involve any change to the current operating license. Under 10 CFR 54.17(a), an application for a renewed license must be filed in accordance with subpart A of 10 CFR Part 2, which includes 10 CFR 2.109(b). However, the NRC may grant exemptions from the requirements of 10 CFR Part 54 pursuant to 10 CFR 54.15. For the reasons stated above, the NRC has determined that granting this exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, the Administrative Procedure Act, or the NRC’s regulations. Therefore, the exemption is authorized by law.

B. The Exemption Presents no Undue Risk to Public Health and Safety

The requested exemption to allow a 3-year time period, rather than the 5 years specified in 10 CFR 2.109(b), for Constellation to submit a sufficient SLRA and receive timely renewal protection is a scheduling change. The action does not change the manner in which the plant operates and maintains public health and safety because the exemption from 10 CFR 2.109(b) does not result in a change to the facility or the current

operating license. The NRC expects that a period of 3 years provides sufficient time for the NRC to perform a full and adequate safety and environmental review, and for the completion of the hearing process. Pending final action on the SLRA, the NRC will continue to conduct all regulatory activities associated with licensing, inspection, and oversight, and will take whatever action may be necessary to ensure adequate protection of the public health and safety. The existence of this exemption does not affect NRC's authority, applicable to all licenses, to modify, suspend, or revoke a license for cause, such as a serious safety concern. Based on the above, the NRC finds that the exemption does not cause undue risk to public health and safety.

C. The Exemption is Consistent with the Common Defense and Security

The requested exemption is a scheduling change that does not alter the design, function, or operation of any structures or plant equipment that is necessary to maintain safe and secure status of any site security matters. Therefore, the NRC finds that the action is consistent with the common defense and security.

D. Special Circumstances

The Commission will not consider granting a specific exemption from the requirements in 10 CFR Part 50 unless special circumstances are present. For the following reasons, the NRC finds that the special circumstances of 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(iii) are present for Quad Cities, Units 1 and 2. That is, application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule, and compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

Special Circumstance of 10 CFR 50.12(a)(2)(ii)

The purpose of 10 CFR 2.109(b), as it is applied to nuclear power reactors licensed by the NRC, is to implement the "timely renewal" provision of Section 9(b) of the APA, 5 USC 558(c). The underlying purpose of this "timely renewal" provision in the

APA is to protect a licensee who is engaged in an ongoing licensed activity and who has complied with agency rules in applying for a renewed or new license from facing license expiration as the result of delays in the administrative process.

On December 13, 1991, the NRC published the final license renewal rule, 10 CFR Part 54, with associated changes to 10 CFR parts 2, 50, and 140, in the *Federal Register* (56 FR 64943; December 13, 1991). The statement of considerations discussed the basis for establishing the latest date for filing license renewal applications for the purposes of the timely renewal doctrine (56 FR 64962; December 13, 1991). As discussed in Section III.A of this issuance, the NRC originally estimated that approximately 3 years would be a reasonable amount of time to review a license renewal application and to complete any hearing that might be held on the application. The NRC changed its original deadline from 3 years to 5 years to have consistent deadlines for when licensees must submit their decommissioning plans and related financial assurance information and when they must submit their license renewal application to receive timely renewal protection.

Accordingly, application of the 5-year period in 10 CFR 2.109(b) is not necessary to achieve the underlying purpose of the timely renewal provision in the regulation if Constellation files a sufficient SLRA at least 3 years prior to expiration of the Quad Cities, Units 1 and 2, licenses. The NRC's current schedule for review of SLRAs is to complete its review and make a decision on issuing the renewed license within 22 months of acceptance if there is no hearing. If a hearing is held, the NRC's model schedule anticipates completion of the NRC's review and of the hearing process, and issuance of a decision on the license renewal application within 30 months of receipt.

However, it is recognized that the estimate of 30 months for completion of a contested hearing is subject to variation in any given proceeding. A period of 3 years (36 months), nevertheless, is expected to provide sufficient time for performance of a full and adequate safety and environmental review, and completion of the hearing process. Meeting this schedule is based on a sufficient application being submitted and on the

review being completed in accordance with the NRC's established license renewal review schedule.

Based on the above, the NRC finds that the special circumstance of 10 CFR 50.12(a)(2)(ii) is present in the particular circumstance of Quad Cities, Units 1 and 2.

Special Circumstance of 10 CFR 50.12(a)(2)(iii)

In addition, the NRC finds that the special circumstance of 10 CFR 50.12(a)(2)(iii) is present in the circumstances of Quad Cities, Units 1 and 2. Compliance with 10 CFR 2.109(b) would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted. In its application, Constellation stated that the decision to continue power operation at Quad Cities, Units 1 and 2, depends on uncertain economic and legislative environments. The impact of changes in economic and legislative conditions on licensees' decisions to pursue license renewal was not a factor considered at the time the timely renewal rule was issued. The NRC therefore finds that the special circumstance of 10 CFR 50.12(a)(2)(iii) is also present.

Special Circumstance of 10 CFR 50.12(a)(2)(vi)

Because the NRC staff finds that special circumstances exist under 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(iii), the NRC staff did not consider whether special circumstances also exist under 10 CFR 50.12(a)(2)(vi), as presented by the licensee in its exemption request.

E. Environmental Considerations

The NRC has determined that the issuance of the requested exemption meets the provisions of categorical exclusion 10 CFR 51.22(c)(25). Under 10 CFR 51.22(c)(25), the granting of an exemption from the requirements of any regulation of chapter 10 qualifies as a categorical exclusion if (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure;

(iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involves one of several matters, which includes scheduling requirements under 10 CFR 51.22(c)(25)(vi)(G). The basis for NRC's determination is provided in the following evaluation of the requirements in 10 CFR 51.22(c)(25)(i)-(vi).

Requirements in 10 CFR 51.22(c)(25)(i)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(i), the exemption must involve a no significant hazards consideration. The criteria for making a no significant hazards consideration determination are found in 10 CFR 50.92(c). The NRC has determined that the granting of the exemption request involves no significant hazards consideration because allowing the submittal of the SLRA at least 3 years before the expiration of the existing license while maintaining the protection of the timely renewal provision in 10 CFR 2.109(b) does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Therefore, the requirements of 10 CFR 51.22(c)(25)(i) are met.

Requirements in 10 CFR 51.22(c)(25)(ii) and (iii)

The exemption constitutes a change to the schedule by which Constellation must submit its SLRA and still place the licenses in timely renewal, which is administrative in nature, and does not involve any change in the types or significant increase in the amounts of effluents that may be released offsite and does not contribute to any significant increase in occupational or public radiation exposure. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and no significant increase in individual or cumulative public or occupational radiation exposure. Therefore, the requirements of 10 CFR 51.22(c)(25)(ii) and (iii) are met.

Requirements in 10 CFR 51.22(c)(25)(iv)

The exempted regulation is not associated with construction, and the exemption does not propose any changes to the site, alter the site, or change the operation of the site. Therefore, the requirements of 10 CFR 51.22(c)(25)(iv) are met because there is no significant construction impact.

Requirements in 10 CFR 51.22(c)(25)(v)

The exemption constitutes a change to the schedule by which Constellation must submit its SLRA and still place the licenses in timely renewal, which is administrative in nature, and does not impact the probability or consequences of accidents. Thus, there is no significant increase in the potential for, or consequences of, a radiological accident. Therefore, the requirements of 10 CFR 51.22(c)(25)(v) are met.

Requirements in 10 CFR 51.22(c)(25)(vi)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(vi)(G), the exemption must involve scheduling requirements. The exemption involves scheduling requirements because it would allow Constellation to submit a SLRA for Quad Cities, Units 1 and 2, at least 3 years prior to the expiration of the existing licenses, rather than the 5 years specified in 10 CFR 2.109(b), and still place the licenses in timely renewal under 10 CFR 2.109(b). Therefore, the requirements of 10 CFR 51.22(c)(25)(vi) are met.

Based on the above, the NRC concludes that the proposed exemption meets the eligibility criteria for a categorical exclusion set forth in 10 CFR 51.22(c)(25). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions.

Accordingly, the NRC has determined that, pursuant to 10 CFR 54.15 and 10 CFR 50.12, the requested exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances, as defined in 10 CFR 50.12(a)(2), are present. Therefore, the NRC hereby grants the licensee a one-time exemption such that if the

licensee submits a subsequent license renewal application for Quad Cities, Units 1 and 2, at least 3 years prior to the expiration of the existing operating licenses, and if the NRC Staff finds it acceptable for docketing, the existing operating licenses will be in timely renewal under NRC regulations until the NRC has made a final determination on whether to approve the subsequent license renewal application.

This exemption is effective upon issuance.

Dated: May 15, 2023

For the Nuclear Regulatory Commission.

/RA/

Gregory F. Suber, Deputy Director,
Division of Operating Reactor Licensing,
Office of Nuclear Reactor Regulation.

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